

AMENDED IN SENATE JUNE 18, 2002

AMENDED IN ASSEMBLY APRIL 4, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2967**

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**Introduced by Assembly Member Wright**

February 25, 2002

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An act to amend Sections 94931, 94945, 94950, 94952, 94955, 94957, 94965, 94975, 94980, and 94995 of, and to add Section 94960.5 to, the Education Code, relating to private postsecondary and vocational institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2967, as amended, Wright. Bureau for Private Postsecondary and Vocational Education.

(1) The existing Private Postsecondary and Vocational Education Reform Act of 1989 sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act establishes the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs, which succeeded to the rights and functions of the former Council for Private Postsecondary and Vocational Education. The bureau, among other things, is required to review and investigate all institutions, programs, and courses of instruction approved under the act, which establishes administrative and judicial procedures for the bureau to follow in carrying out these duties. Existing provisions of the act require that, if action is brought against an institution, notice of the

action must be served upon the institution, and if the institution requests a hearing, that the hearing be held within 10 days of the bureau receiving the request.

This bill would require that the hearing be held within 30 days of the bureau receiving the request. This bill would make additional technical and conforming changes to delete references to the former council.

(2) *Existing law requires the bureau to assess sums from each institution, based upon the course tuition paid over the calendar year, according to a prescribed formula, for purposes of the Student Tuition Recovery Fund. This assessment is calculated only for those students who are California residents and are eligible to be reimbursed from the fund. This assessment is not applicable if the institution receives all of its students' total charges from 3rd-party payers, as defined. Each institution is required to collect the amount assessed by the bureau in the form of a Student Tuition Recovery Fund fee from its new students, and remit those fees to the bureau in the quarter following their collection.*

*This bill would authorize an institution to waive collection of the Student Tuition Recovery Fund fee, and to assume the fee as a debt of the institution, which must be disclosed to the student in the enrollment agreement. The bill would provide that the fee shall be assessed as tuition is paid or loans are funded on behalf of the student, based upon academic term, and that the subsequent disenrollment at the institution shall not relieve the institution of the obligation to pay the fee to the bureau, nor be the basis for refund of the fee to the student. The bill would define a "new student" as a student who signs the enrollment agreement on or after January 1, 2002. The bill would declare that students signing enrollment agreements prior to that date shall be charged the Student Tuition Recovery Fund fee in effect on that date. The bill would declare these provisions to be declaratory of existing law.*

(3) Existing law requires the bureau to investigate complaints from any person claiming damage as a result of any act or practice by a postsecondary or vocational educational institution or its agent, or both, that is a violation of the act and requires the bureau to adopt regulations that prescribe procedures for complaint handling and complaint disclosure. The bureau is required to report evidence of violations to the Attorney General and is authorized to commence an action to revoke an institution's approval to operate. The bureau is required to make an annual report to the Legislature summarizing its activities during the previous fiscal year.



This bill would require the bureau to include, in its annual report to the Legislature, a statistical summary of complaints filed with the bureau, the bureau's disposition of those complaints and the bureau's enforcement actions relative to those complaints.

~~(3)~~

(4) Under existing law, institutions may register with the bureau to offer intensive English language programs, short-term career training programs, short-term seminar training programs, programs offered to assist students to prepare for a licensure examination, and continuing education programs. To register, institutions must file a registration form, containing specified information, with the bureau for public disclosure. Continuing education programs are exempt from these registration requirements.

This bill would authorize the bureau to require that registered institutions, at least every 3 years following the initial registration, verify all or a portion of the information required to accompany a registration form. The bill would make additional technical and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 94931 of the Education Code is  
 2 amended to read:  
 3 94931. (a) No private postsecondary educational institution,  
 4 except those offering degrees and approved under Article 8  
 5 (commencing with Section 94900) or offering vocational and  
 6 nondegree granting programs and approved under Article 9  
 7 (commencing with Section 94915), or those that are exempt from  
 8 this chapter, may offer educational services or programs unless the  
 9 institution has been registered by the bureau as meeting the  
 10 requirements of this section.  
 11 (b) An institution approved to offer degrees under Article 8  
 12 (commencing with Section 94900) or approved to offer vocational  
 13 and nondegree granting programs under Article 9 (commencing  
 14 with Section 94915) may offer registered programs without  
 15 affecting its status under either of those articles so long as the  
 16 registered program is disclosed in its approval to operate  
 17 application or the institution completes a registration application



1 and receives specific authorization for the program, maintains  
2 compliance for all registered programs in conformity with this  
3 article, and maintains a set of student records for registered  
4 programs separate from its approved programs. Any registered  
5 institution that offers an educational program not specified in  
6 subdivision (c) or not otherwise exempt from this chapter shall be  
7 approved under Article 8 (commencing with Section 94900) or  
8 Article 9 (commencing with Section 94915) and shall comply with  
9 this chapter.

10 (c) Except as otherwise provided in this article, this chapter  
11 does not apply to an educational service that qualifies for  
12 registration status and that complies with this article. The  
13 educational services that qualify for registration status are limited  
14 to:

15 (1) An educational service, as defined in Section 94733, that is  
16 offered to provide an intensive English language program.

17 (2) An educational service, as defined in Section 94742.1, that  
18 is offered to provide short-term career training.

19 (3) An educational service, as defined in Section 94742.2, that  
20 is offered to provide short-term seminar training.

21 (4) An educational service that is offered to assist students to  
22 prepare for an examination for licensure, except as provided in  
23 Section 94787.

24 (5) An educational service that consists of continuing  
25 education not otherwise exempt from this chapter.

26 (d) An institution that qualifies under any of paragraphs (1) to  
27 (4), inclusive, of subdivision (c) shall complete a registration form  
28 provided by the bureau, including a signed declaration by the chief  
29 executive officer of the institution under penalty of perjury, and  
30 provide all of the following information for public disclosure:

31 (1) The owner's legal name, headquarters address, and the  
32 name of an agent for the service of process within California.

33 (2) All names, whether real or fictitious, under which the owner  
34 is doing and will do business.

35 (3) The names and addresses of the principal officers of the  
36 institution.

37 (4) A list of all California locations at which the institution  
38 operates, its offerings, and, if previously registered, the number of  
39 students enrolled in California during the preceding year.



(5) A copy of the registration form or agreement that enrolls the student in the educational service that contains all of the following:

(A) The name and address of the location where instruction will be provided.

(B) The title of the educational program.

(C) The total amount the student is obligated to pay for the educational service.

(D) A clear and conspicuous statement that the enrollment form or agreement is a legally binding instrument when signed by the student and accepted by the institution.

(E) The refund policy developed by the institution unless this article specifies a different refund policy.

(F) Unless this article specifies that the institution is required to participate in the Student Tuition Recovery Fund, a statement that the institution does not participate in that fund.

(G) In 10-point boldface ~~print~~ *type* or larger, the following statement: “Any questions or problems concerning this school that have not been satisfactorily answered or resolved by the school should be directed to the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs; (insert city, address, CA ZIP Code number, and telephone number).”

(H) Schools approved under paragraph (1) of subdivision (c) of Section 94931 shall also include with the statement required by subparagraph (G) information referring the student to a consulate of his or her country and the United States Immigration and Naturalization Service.

(6) A brochure or catalog and a sample advertisement used to promote the educational service.

(7) A copy of its certificate of completion.

(8) If the educational service offers short-term career training, the institution shall comply with the requirements of Sections 94804 and 94806.

(9) If the institution assists students in obtaining financing from a third party for the cost of the educational services at the institution, a copy of the contract or finance agreement reflecting that financing.

(e) The bureau shall establish the initial registration fee and the annual fee to be paid by institutions registered under this article. No institution shall be registered pursuant to this article unless it

1 has paid the appropriate fees required by the bureau. Upon receipt  
2 of an institution's initial application for registration for a program,  
3 the bureau may conduct a site visit pursuant to subdivision (c) of  
4 Section 94915.

5 (f) For the purposes of communication with other state  
6 agencies, any organization or individual registered to offer  
7 short-term seminar training may state that they are "authorized"  
8 by the State of California.

9 (g) (1) Except as provided by subdivision (f), any institution  
10 registered pursuant to this article shall be restricted to stating that  
11 their training is "registered" with the State of California and is  
12 prohibited from using the words "approval," "approved,"  
13 "approval to operate," "approved to operate," "authorized,"  
14 "licensed," or "licensed to operate."

15 (2) The institution shall place the following statement in all  
16 brochures, catalogues, enrollment agreements, and registration  
17 forms, in a conspicuous location in at least 12-point ~~bold faced~~  
18 *boldfaced* type:

19 "We are registered with the State of California. Registration  
20 means we have met certain minimum standards imposed by the  
21 state for registered schools on the basis of our written application  
22 to the state. Registration does not mean we have met all of the more  
23 extensive standards required by the state for schools that are  
24 approved to operate or licensed or that the state has verified the  
25 information we submitted with our registration form."

26 (h) The bureau may require, at least every three years following  
27 the initial registration date, that a registered institution verify all  
28 or part of the information required to be provided with the  
29 registration form under subdivision (d).

30 (i) Sections 94812 and 94818, Sections 94822 to 94825,  
31 inclusive, and Sections 94829 to 94838, inclusive, and Sections  
32 94841 and 94846 shall apply to any institution registered pursuant  
33 to this article.

34 (j) Article 1 (commencing with Section 94700), Article 2  
35 (commencing with Section 94710), Article 3 (commencing with  
36 Section 94750), Article 3.5 (commencing with Section 94760),  
37 Article 4 (commencing with Section 94770), and Article 13  
38 (commencing with Section 94950) shall apply to any institution  
39 registered pursuant to this article.

SEC. 2. *Section 94945 of the Education Code is amended to read:*

94945. (a) The bureau shall assess each institution, except for an institution that receives all of its students' total charges, as defined in subdivision (k) of Section 94852, from third-party payers. A third-party payer, for the purposes of this section, means an employer, government program, or other payer that pays a student's total charges directly to the institution when no separate agreement for the repayment of that payment exists between the third-party payer and the student. A student who receives third-party payer benefits for his or her institutional charges is not eligible for benefits from the Student Tuition Recovery Fund.

(1) (A) The amount assessed each institution shall be calculated only for those students who are California residents and who are eligible to be reimbursed from the fund. It shall be based on the actual amount charged each of these students for total tuition cost, regardless of the portion that is prepaid, *and shall be assessed as tuition is paid or loans are funded on behalf of the student, based upon academic term.* The amount of the assessment on an institution shall be determined in accordance with ~~paragraph~~ *paragraphs (2) and (3). Each*

(B) *Each* institution shall collect the amount assessed by the bureau in the form of a Student Tuition Recovery Fund fee from its new students, and remit these fees to the bureau during the quarter immediately following the quarter in which the fees were collected from the students, *or from loans funded on behalf of the students, except that an institution may waive collection of the Student Tuition Recovery Fund fee and assume the fee as a debt of the institution. The student's subsequent disenrollment at the institution shall not relieve the institution of the obligation to pay the fee to the bureau, nor be the basis for refund of the fee to the student.* An institution may not charge a fee of any kind for the collection of the Student Tuition Recovery Fund fee. An institution may refuse to enroll a student who has not paid, or made provisions to pay, the appropriate Student Tuition Recovery Fund fee.

(C) *For the purposes of this section, a "new student" means a student that signs their enrollment agreement on or after January 1, 2002. Those students who sign their enrollment agreement prior to January 1, 2002, are not "new students" for purposes of this*



1 *section, and shall be assessed the Student Tuition Recovery Fund*  
2 *fee in effect prior to January 1, 2002, except that an institution may*  
3 *waive collection of the Student Tuition Recovery Fund fee in effect*  
4 *prior to January 1, 2002. Institutions electing to waive collection*  
5 *of the Student Tuition Recovery Fund fee shall disclose this fact to*  
6 *the student in the enrollment agreement, along with the amount of*  
7 *the fee paid on the student's behalf to the bureau.*

8 (2) The amount collected from a new student by an institution  
9 shall be calculated on the basis of the course tuition paid over the  
10 current calendar year. For purposes of annualized payment, a new  
11 student enrolled in a course of instruction that is longer than one  
12 calendar year in duration shall pay fees for the Student Tuition  
13 Recovery Fund based on the amount of tuition collected during the  
14 current calendar year.

15 (3) The assessment made pursuant to this section shall be made  
16 in accordance with both of the following:

17 (A) Each new student shall pay a Student Tuition Recovery  
18 Fund assessment for the period of January 1, 2002, to December  
19 31, 2002, inclusive, at the rate of three dollars (\$3) per thousand  
20 dollars of tuition paid, rounded to the nearest thousand dollars.

21 (B) Commencing January 1, 2003, Student Tuition Recovery  
22 Fund fees shall be collected from new students at the rate of two  
23 dollars and fifty cents (\$2.50) per thousand dollars of tuition paid,  
24 rounded to the nearest thousand dollars.

25 (4) The bureau may levy additional reasonable special  
26 assessments on an institution under this section only if these  
27 assessments are required to ensure that sufficient funds are  
28 available to satisfy the anticipated costs of paying student claims  
29 pursuant to Section 94944.

30 (5) (A) The bureau may not levy a special assessment unless  
31 the balance in any account in the Student Tuition Recovery Fund  
32 falls below two hundred fifty thousand dollars (\$250,000), as  
33 certified by the Secretary of the State and Consumer Services  
34 Agency.

35 (B) A special assessment is a surcharge, collected by each  
36 institution from newly enrolled students, of up to 100 percent of  
37 that institution's regular assessment for four consecutive quarters.  
38 The affected student shall pay the surcharge simultaneously with  
39 his or her regular quarterly payment to the Student Tuition  
40 Recovery Fund.



1 (C) The bureau shall provide at least 90 days' notice of an  
2 impending special assessment to each affected institution. This  
3 notice shall also be posted on the bureau's Internet Web site.

4 (D) The bureau may apply any special assessment payments  
5 that it receives from an institution as a credit toward that  
6 institution's current or future obligations to the Student Tuition  
7 Recovery Fund.

8 (6) The assessments shall be paid into the Student Tuition  
9 Recovery Fund and credited to the appropriate account in the fund,  
10 and the deposits shall be allocated, except as otherwise provided  
11 for in this chapter, solely for the payment of valid claims to  
12 students. Unless additional reasonable assessments are required,  
13 no assessments for the degree-granting postsecondary educational  
14 institution account shall be levied during any fiscal year if, as of  
15 June 30 of the prior fiscal year, the balance in that account of the  
16 fund exceeds one million five hundred thousand dollars  
17 (\$1,500,000). Unless additional reasonable assessments are  
18 required, no assessments for the vocational educational institution  
19 account shall be levied during any fiscal year if, as of June 30 of  
20 the prior fiscal year, the balance in that account exceeds four  
21 million five hundred thousand dollars (\$4,500,000). However,  
22 regardless of the balance in the fund, assessments shall be made on  
23 any newly approved institution. Notwithstanding Section 13340  
24 of the Government Code, the moneys so deposited in the fund are  
25 continuously appropriated to the bureau for the purpose of paying  
26 claims to students pursuant to Section 94944.

27 (b) The bureau may deduct from the fund the reasonable costs  
28 of administration of the tuition recovery program authorized by  
29 Section 94944 and this section. The maximum amount of  
30 administrative costs that may be deducted from the fund, in a fiscal  
31 year, shall not exceed one hundred thousand dollars (\$100,000)  
32 from the degree-granting postsecondary educational institution  
33 account and three hundred thousand dollars (\$300,000) from the  
34 vocational educational institution account, plus the interest earned  
35 on money in the fund that is credited to the fund. Prior to the  
36 bureau's expenditure of any amount in excess of one hundred  
37 thousand dollars (\$100,000) from the fund for administration of  
38 the tuition recovery program, the bureau shall develop a plan  
39 itemizing that expenditure. The plan shall be subject to the  
40 approval of the Department of Finance. Institutions, except for

1 schools of cosmetology licensed pursuant to Article 8  
2 (commencing with Section 7362) of Chapter 10 of Division 3 of  
3 the Business and Professions Code and institutions that offer  
4 vocational or job training programs, that meet the student tuition  
5 indemnification requirements of a California state agency, that  
6 secure a policy of surety or insurance from an admitted insurer  
7 protecting their students against loss of paid tuition, or that  
8 demonstrate to the bureau that an acceptable alternative method of  
9 protecting their students against loss of prepaid tuition has been  
10 established, shall be exempted from this section.

11 (c) Reasonable costs in addition to those permitted under  
12 subdivision (b) may be deducted from the fund for any of the  
13 following purposes:

14 (1) To make and maintain copies of student records from  
15 institutions that close.

16 (2) To reimburse the bureau or a third party serving as the  
17 custodian of records.

18 (d) In the event of a closure by any approved institution under  
19 this chapter, any assessments that have been made against those  
20 institutions, but have not been paid into the fund, shall be  
21 recovered. Any payments from the fund made to students on  
22 behalf of any institution shall be recovered from that institution.

23 (e) In addition to civil remedies, the bureau may order an  
24 institution to pay previously unpaid assessments or to reimburse  
25 the bureau for any payments made from the fund in connection  
26 with the institution. Before any order is made pursuant to this  
27 section, the bureau shall provide written notice to the institution  
28 and notice of the institution's right to request a hearing within 30  
29 days of the service of the notice. If a hearing is not requested within  
30 30 days of the service of the notice, the bureau may order payment.  
31 If a hearing is requested, Chapter 5 (commencing with Section  
32 11500) of Part 1 of Division 3 of Title 2 of the Government Code  
33 shall apply, and the bureau shall have all powers prescribed in that  
34 chapter. Within 30 days after the effective date of the issuance of  
35 the order, the bureau may enforce the order in the same manner as  
36 if it were a money judgment pursuant to Title 9 (commencing with  
37 Section 680.010) of Part 2 of the Code of Civil Procedure.

38 (f) In addition to any other action that the bureau may take  
39 under this chapter, the bureau may suspend or revoke an  
40 institution's approval to operate because of the institution's failure

1 to pay assessments when due or failure to pay reimbursement for  
2 any payments made from the fund within 30 days of the bureau's  
3 demand for payment.

4 (g) The moneys deposited in the fund shall be exempt from  
5 execution and shall not be the subject of litigation or liability on  
6 the part of creditors of those institutions or students.

7 *SEC. 3.* Section 94950 of the Education Code is amended to  
8 read:

9 94950. (a) The procedures set forth in Section 94965 or,  
10 alternatively, in Section 94975, govern the following types of  
11 administrative actions:

12 (1) Denial of an application for an approval or renewal of an  
13 approval.

14 (2) Suspension or revocation of an existing approval.

15 (3) Appeals of conditional approvals.

16 (b) In lieu of the procedures set forth in Section 94965 or  
17 94975, an institution may voluntarily elect to utilize the  
18 procedures set forth in Section 94980 if it appeals a conditional  
19 approval by the bureau.

20 (c) The procedures set forth in Section 94970 govern  
21 emergency suspensions of an institution's approval to operate  
22 initiated by the bureau.

23 (d) Sections 94952 and 94955 authorize the bureau and the  
24 Attorney General to seek various forms of judicial relief in order  
25 to enforce this chapter.

26 (e) Section 94960 governs actions based on student complaints.

27 (f) Section 94985 authorizes civil remedies for individual  
28 students in addition to those available under other provisions of  
29 law.

30 (g) Procedures established pursuant to regulations adopted by  
31 the bureau shall govern the following types of administrative  
32 appeals:

33 (1) Probationary actions.

34 (2) Decisions by the bureau denying an institution's claim for  
35 an exemption or exclusion from this chapter or any provision  
36 thereof.

37 ~~*SEC. 3.*~~

38 *SEC. 4.* Section 94952 of the Education Code is amended to  
39 read:

1 94952. (a) The Attorney General, or any district attorney, or  
2 city attorney, may make investigations as may be necessary to  
3 carry out this chapter, including, but not necessarily limited to,  
4 investigations of complaints. The bureau may jointly bring actions  
5 as necessary to enforce this chapter, including, but not necessarily  
6 limited to, civil actions for injunctive relief. In actions brought  
7 pursuant to this subdivision, the bureau shall be represented by the  
8 Attorney General.

9 (b) The Attorney General shall represent the bureau in the  
10 following administrative proceedings arising under this chapter:

11 (1) Suspension or revocation of an institution's approval.

12 (2) Denial of an institution's application for approval.

13 (3) An appeal of a conditional approval to operate issued  
14 following a review of an institution's application for approval.

15 (c) Nothing in this section or this chapter shall preclude the  
16 Attorney General, or any district attorney or city attorney, from  
17 any of the following:

18 (1) Bringing any action on behalf of the people as he or she is  
19 empowered by law to bring, including, but not necessarily limited  
20 to, actions based upon alleged violations of Chapter 5  
21 (commencing with Section 17200) of Part 2, and Chapter 1  
22 (commencing with Section 17500) of Part 3, of Division 7 of the  
23 Business and Professions Code.

24 (2) Conducting investigations necessary to determine whether  
25 there have been violations of law specified in paragraph (1).

26 (3) Conducting any investigations that he or she is authorized  
27 to conduct, including, but not necessarily limited to, investigations  
28 authorized under Section 11180 of the Government Code.

29 (4) In the case of the Attorney General, delegating his or her  
30 representation authority under subdivision (b) to staff attorneys of  
31 the bureau.

32 (5) Entering into an agreement or understanding with the  
33 bureau with respect to representation in any judicial or  
34 administrative proceeding not expressly enumerated herein.

35 ~~SEC. 4.—~~

36 *SEC. 5.* Section 94955 of the Education Code is amended to  
37 read:

38 94955. (a) The bureau may bring an action for equitable  
39 relief for any violation of this chapter. The equitable relief may  
40 include restitution, a temporary restraining order, the appointment

1 of a receiver, and a preliminary or permanent injunction. The  
2 action may be brought in the county in which the defendant resides  
3 or in which any violation has occurred or may occur.

4 (b) The remedies provided in this section supplement, and do  
5 not supplant, the remedies and penalties under other provisions of  
6 law.

7 (c) In actions brought pursuant to this section, the bureau shall  
8 be represented by the Attorney General.

9 ~~SEC. 5.—~~

10 *SEC. 6.* Section 94957 of the Education Code is amended to  
11 read:

12 94957. (a) In addition to or in lieu of any other remedy or  
13 penalty, the bureau may issue a citation to an institution for  
14 committing any violation of this chapter or regulation adopted  
15 under this chapter.

16 (b) The citation may contain an order of abatement or the  
17 assessment of an administrative fine. The administrative fine may  
18 not exceed two thousand five hundred dollars (\$2,500) for each  
19 violation. The bureau shall base its assessment of the  
20 administrative fine on the nature and seriousness of the violation,  
21 the persistence of the violation, the good faith of the institution, the  
22 history of previous violations, and the purposes of this chapter.

23 (c) The citation shall be in writing and shall describe the nature  
24 of the violation and the specific provision of law determined to  
25 have been violated. The citation shall inform the institution of its  
26 right to request a hearing in writing within 15 days of the date that  
27 the citation was issued. If a hearing is not requested, payment of  
28 the administrative fine shall not constitute an admission of the  
29 violation charged. If a hearing is requested, the bureau shall  
30 provide a hearing as described in Section 94965, 94975, or 94980.  
31 Payment of the administrative fine is due 15 days after the citation  
32 was issued if a hearing is not requested, or when a final order is  
33 entered if a hearing is requested. The bureau may enforce the  
34 administrative fine as if it were a money judgment pursuant to Title  
35 9 (commencing with Section 680.10) of Part 2 of the Code of Civil  
36 Procedure.

37 (d) All administrative fines shall be deposited in the Private  
38 Postsecondary and Vocational Education Administration Fund.

39 ~~SEC. 6.—~~

1     *SEC. 7.* Section 94960.5 is added to the Education Code, to  
2 read:

3     94960.5. The bureau shall include in its annual report to the  
4 Legislature made pursuant to Section 94995, a statistical summary  
5 of complaints filed pursuant to Section 94960, that includes, but  
6 is not necessarily limited to, all of the following:

7     (a) The number of complaints filed.

8     (b) The nature of the complaint, by appropriate categories.

9     (c) The disposition of the complaints.

10    (d) The actions taken by the bureau, under subdivision (c) of  
11 Section 94960, to enforce a prevailing complaint.

12    ~~SEC. 7.—~~

13    *SEC. 8.* Section 94965 of the Education Code is amended to  
14 read:

15    94965. (a) Proceedings in connection with the denial of an  
16 application to operate, the grant of a conditional approval to  
17 operate, or the revocation of an approval to operate shall be  
18 conducted in accordance with Chapter 5 (commencing with  
19 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
20 Code, and the bureau shall have all of the powers granted in that  
21 chapter. Any action by the bureau to place an institution on  
22 probation shall be subject to appeal, and the bureau shall establish  
23 procedures that provide the institution with adequate notice and an  
24 opportunity to be heard and to present evidence as to why the  
25 action recommended by staff or by a visiting committee shall not  
26 be taken.

27    (b) Upon taking any action to suspend or revoke an institution's  
28 approval to operate, or to deny an application for renewal of an  
29 approval to operate, the bureau shall provide written notice to the  
30 Student Aid Commission, the United States Department of  
31 Education, and to any appropriate accrediting association.

32    ~~SEC. 8.—~~

33    *SEC. 9.* Section 94975 of the Education Code is amended to  
34 read:

35    94975. (a) This section establishes the procedure for notice  
36 and hearing required under this chapter and, except as provided in  
37 Section 94970, may be used in lieu of other notice or hearing  
38 requirements provided in this chapter.

39    (b) If notice of administrative action is required by this chapter,  
40 the bureau shall serve notice stating the following:

1 (1) The action, including the penalties and administrative  
2 sanctions sought.

3 (2) The grounds for the action with sufficient particularity to  
4 give notice of the transactions, occurrences, violations, or other  
5 matters on which the action is based.

6 (3) The right to a hearing and the time period within which the  
7 party subject to the notice may request a hearing in writing. The  
8 time period shall not be less than 15 days after service of the notice  
9 unless a longer period is provided by statute.

10 (4) The right to be present at the hearing, to be represented by  
11 counsel, to cross-examine witnesses, and to present evidence.

12 (5) That, if the party subject to the notice does not request a  
13 hearing in writing within the time period expressed in the notice,  
14 he or she will waive or forfeit his or her right to an administrative  
15 hearing and the action will become final.

16 (c) If a party subject to a notice provided pursuant to  
17 subdivision (b) requests a hearing in writing within the time period  
18 specified in subparagraph (3) of paragraph (b), then within 30 days  
19 of receiving this request, the bureau shall schedule a hearing. The  
20 hearing shall be held in a location determined pursuant to Section  
21 11508 of the Government Code. The bureau shall serve reasonable  
22 notice of the time and place for the hearing at least 10 days before  
23 the hearing. The bureau may continue the date of the hearing upon  
24 a showing of good cause.

25 (d) (1) Any party, including the bureau, may submit a written  
26 request to any other party before the hearing to obtain the names  
27 and addresses of any person who has personal knowledge, or who  
28 the party receiving the request claims to have personal knowledge,  
29 of any of the transactions, occurrences, violations, or other matters  
30 that are the basis of the administrative action. In addition, the  
31 requesting party shall have the right to inspect and copy any  
32 written statement made by that person and any writing, as defined  
33 by Section 250 of the Evidence Code, or thing that is in the custody,  
34 or under the control, of the party receiving the request and that is  
35 relevant and not privileged. This subdivision shall constitute the  
36 exclusive method for prehearing discovery. However, nothing in  
37 this paragraph shall affect the bureau's authority, at any time, to  
38 investigate, inspect, monitor, or obtain and copy information  
39 under any provision of this chapter.



(2) The written request described in paragraph (1) shall be made before the hearing and within 30 days of the service of the notice described in subdivision (b). Each recipient of a request shall comply with the request within 15 days of its service by providing the names and addresses requested and by producing at a reasonable time at the bureau's office, or other mutually agreed reasonable place, the requested writings and things. The bureau may extend the time for response upon a showing of good cause.

(3) Except as provided in this paragraph, no party may introduce the testimony or statement of any person or any writing or thing into evidence at the hearing if that party failed to provide the name and address of the person or to produce the writing or thing for inspection and copying as provided by this subdivision. A party may introduce the testimony, statement, writing, or thing that was not identified or produced as required herein only if there is no objection or if the party establishes that the person, writing, or thing was unknown at the time when the response was made to the written request, the party could not have informed other parties within a reasonable time after learning of the existence of the person, writing, or thing, and no party would be prejudiced by the introduction of the evidence.

(e) Before the hearing has commenced, the bureau shall issue subpoenas at the written request of any party for the attendance of witnesses or the production of documents or other things in the custody or under the control of the person subject to the subpoena. Subpoenas issued pursuant to this section are subject to Section 11510 of the Government Code.

(f) (1) The bureau shall designate an impartial hearing officer to conduct the hearing. The hearing officer may administer oaths and affirmations, regulate the course of the hearing, question witnesses, and otherwise investigate the issues, take official notice according to the procedure provided in Division 4 (commencing with Section 450) of the Evidence Code of any technical or educational matter in the bureau's special field of expertise and of any matter that may be judicially noticed, set the time and place for continued hearings, fix the time for the filing of briefs and other documents, direct any party to appear and confer to consider the simplification of issues by consent, and prepare a statement of decision.

(2) Neither a hearing officer nor any person who has a direct or indirect interest in the outcome of the hearing shall communicate directly or indirectly with each other regarding any issue involved in the hearing while the proceeding is pending without notice and opportunity for all parties to participate in the communication. A hearing officer who receives any ex parte communication shall immediately disclose the communication to the bureau and all other parties. The bureau may disqualify the hearing officer if necessary to eliminate the effect of the ex parte communication. If the bureau finds that any party willfully violated, or caused the violation of, this paragraph, the bureau shall enter that party's default and impose the administrative sanction set forth in the notice provided pursuant to subdivision (b).

(g) (1) Each party at the hearing shall be afforded an opportunity to present evidence, respond to evidence presented by other parties, cross-examine, and present written argument or, if permitted by the hearing officer, oral argument on the issues involved in the hearing. The bureau may call any party as a witness who may be examined as if under cross-examination.

(2) Each party may appear through its representative or through legal counsel.

(3) The technical rules relating to evidence and witnesses shall not apply. However, only relevant evidence is admissible.

(4) Oral evidence shall be taken only upon oath or affirmation. The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who is not proficient in English shall provide, at the proponent's cost, an interpreter proficient in English and the language in which the witness will testify.

(5) The hearing shall be recorded by tape recording or other phonographic means unless all parties agree to another method of recording the proceedings.

(6) (A) At any time 10 or more days before the hearing, any party may serve on the other parties a copy of any declaration that the party proposes to introduce in evidence.

(B) The declaration shall be accompanied by a notice indicating the date of service of the notice and stating that the declarations will be offered into evidence, the declarants will not be called as witnesses, and there will be no right of cross-examination unless the party receiving the notice requests

1 the right to cross-examine, in writing, within seven days of the  
2 service of the declarations and notice.

3 (C) If no request for cross-examination is served within seven  
4 days of the service of the declarations and notice described in  
5 subparagraph (B), the right to cross-examination is deemed  
6 waived and the declaration shall have the same effect as if the  
7 declarant testified orally. Notwithstanding this paragraph, a  
8 declaration may be admitted as hearsay evidence without  
9 cross-examination.

10 (7) Disposition of any issues involved in the hearing may be  
11 made by stipulation or settlement.

12 (8) If a party fails to appear at a hearing, that party's default  
13 shall be taken and the party shall be deemed to have waived the  
14 hearing and agreed to the administrative action and the grounds for  
15 that action described in the notice given pursuant to subdivision  
16 (b). The bureau shall serve the party with an order of default  
17 including the administrative action ordered. The order shall be  
18 effective upon service or at any other time designated by the  
19 bureau. The bureau may relieve a party from an order of default  
20 if the party applies for relief within 15 days after the service of an  
21 order of default and establishes good cause for relief. An  
22 application for relief from default shall not stay the effective date  
23 of the order unless expressly provided by the bureau.

24 (h) (1) At any time before the matter is submitted for decision,  
25 the bureau may amend the notice provided pursuant to subdivision  
26 (b) to set forth any further grounds for the originally noticed  
27 administrative action or any additional administrative action and  
28 the grounds therefor. The statement of the further grounds for the  
29 originally noticed administrative action, or of the grounds for any  
30 additional administrative action, shall be made with sufficient  
31 particularity to give notice of the transactions, occurrences,  
32 violations, or other matters on which the action or additional action  
33 is based. The amended notice shall be served on all parties. All  
34 parties affected by the amended notice shall be given reasonable  
35 opportunity to respond to the amended notice as provided in this  
36 section.

37 (2) The bureau may amend the notice after the case is submitted  
38 for decision. The bureau shall serve each party with notice of the  
39 intended amendment, and shall provide the party with an  
40 opportunity to show that the party will be prejudiced by the

1 amendment unless the case is reopened to permit the party to  
2 introduce additional evidence. If prejudice is shown, the bureau  
3 shall reopen the case to permit the introduction of additional  
4 evidence.

5 (i) (1) Within 30 days after the conclusion of the hearing or at  
6 another time established by the bureau, the hearing officer shall  
7 submit a written statement of decision setting forth a  
8 recommendation for a final decision and explaining the factual and  
9 legal basis for the decision as to each of the grounds for the  
10 administrative action set forth in the notice or amended notice. The  
11 bureau shall serve the hearing officer's statement of decision on  
12 each party and its counsel within 10 days of its submission by the  
13 hearing officer.

14 (2) The director shall make the final decision which shall be  
15 based exclusively on evidence introduced at the hearing. The final  
16 decision shall be supported by substantial evidence in the record.  
17 The director also shall issue a statement of decision explaining the  
18 factual and legal basis for the final decision as to each of the  
19 grounds for the administrative action set forth in the notice or  
20 amended notice. The director shall issue an order based on its  
21 decision which shall be effective upon service or at any other time  
22 designated by the director. The director, or his or her agent, shall  
23 serve a copy of the final decision and order, within 10 days of their  
24 issuance, on each party and its counsel.

25 (3) The bureau shall serve a certified copy of the complete  
26 record of the hearing, or any part thereof designated by a party,  
27 within 30 days after receiving the party's written request and  
28 payment of the cost of preparing the requested portions of the  
29 record. The complete record shall include all notices and orders  
30 issued by the bureau, a transcript of the hearing, the exhibits  
31 admitted or rejected, the written evidence and any other papers in  
32 the case, the hearing officer's statement of decision, and the final  
33 decision and order.

34 (j) The bureau shall serve all notices and other documents that  
35 are required to be served by this section on each party by personal  
36 delivery, by certified mail, return receipt requested, or by any other  
37 means designated by the bureau.

38 (k) (1) Any party aggrieved by the director's final decision and  
39 order may seek judicial review by filing a petition for a writ of  
40 mandate pursuant to Section 1085 of the Code of Civil Procedure

1 within 30 days of the issuance of the final decision and order. If  
2 review is not sought within that period, the party's right to review  
3 shall be deemed waived.

4 (2) The aggrieved party shall present the complete record of the  
5 hearing or all portions of the record necessary for the court's  
6 review of the director's final decision and order. The court shall  
7 deny the petition for a writ of mandate if the record submitted by  
8 the party is incomplete. The court shall not consider any matter not  
9 contained in the record. The director's findings of fact and legal  
10 conclusions supporting the final decision shall be conclusive if  
11 supported by substantial evidence on the record considered as a  
12 whole.

13 (3) The final order shall not be stayed or enjoined during  
14 review except upon the court's grant of an order on a party's  
15 application after due notice to the director and the Attorney  
16 General. The order shall be granted only if the party establishes the  
17 substantial likelihood that it will prevail on the merits and posts a  
18 bond sufficient to protect fully the interests of the students, the  
19 bureau, and the fund, from any loss.

20 (l) The bureau may adopt regulations establishing alternative  
21 means of providing notice and an opportunity to be heard in  
22 circumstances in which a full hearing is not required by law.

23 (m) For the purposes of this section, "good cause" shall  
24 require sufficient ground or reason for the determination to be  
25 made by the bureau.

26 ~~SEC. 9.—~~

27 *SEC. 10.* Section 94980 of the Education Code is amended to  
28 read:

29 94980. (a) If the bureau, through the director, denies an  
30 institution's application for approval, grants a conditional  
31 approval, or initiates a proceeding to suspend or revoke an  
32 institution's approval to operate, the institution may request a  
33 hearing pursuant to this section in lieu of the hearing procedure  
34 designated by the bureau under Section 94965 or 94975.

35 (b) At the time the bureau provides notice to an institution of  
36 its right to a hearing under Section 94965 or 94975 in connection  
37 with the denial of an application for approval to operate, the  
38 issuance of a conditional approval to operate, or a proposed  
39 suspension or revocation of approval to operate, the bureau also  
40 shall provide notice of the provisions of this section.



1 (c) Within 15 days after service of the notice described in  
2 subdivision (b), the institution may request in writing a hearing  
3 under this section in lieu of the hearing procedure in Section 94965  
4 or 94975. The request shall acknowledge that, by electing to  
5 proceed under this section, the institution is knowingly waiving all  
6 rights under the hearing procedure otherwise provided by the  
7 bureau.

8 (d) After receiving the institution's request for a hearing under  
9 this section, the bureau shall provide the institution or its  
10 representative with copies of all the documents, testimony in  
11 declaration form, and written arguments on which the bureau  
12 relies to support its proposed administrative action.

13 (e) The institution shall have 30 days from the service of the  
14 bureau's written evidence and arguments to submit all the  
15 documents, testimony in declaration form, and written arguments  
16 on which the institution relies in opposition to the bureau's  
17 proposed administrative action.

18 (f) Neither the bureau nor the institution has any right to  
19 discovery or to compel the production of documents or the  
20 testimony of witnesses by subpoena.

21 (g) The director shall review all of the documents, declarations,  
22 and arguments, and shall render a proposed decision in writing,  
23 based solely on the written evidence and arguments that set forth  
24 the proposed administrative action and the factual and legal bases  
25 for it.

26 (h) The bureau shall serve the institution with a written  
27 decision setting forth the administrative action taken and the legal  
28 and factual bases for it. The decision shall become final within 30  
29 days unless another time is specified by the bureau.

30 (i) The bureau shall serve a certified copy of the complete  
31 record, or any part thereof designated by an institution, within 30  
32 days after receiving the institution's written request and payment  
33 of the cost of preparing the requested record or portions thereof.  
34 The complete record shall consist of all notices and orders of the  
35 bureau, the documents, declarations, and written argument  
36 submitted, a transcript of any oral argument, and the final decision  
37 and order.

38 (j) Any party aggrieved by the bureau's final decision and order  
39 may seek judicial review as provided in, and subject to, the  
40 requirements of subdivision (k) of Section 94975.

(k) All documents required by this section to be served by the bureau shall be served on the institution, its counsel, or authorized representative by any means authorized for service pursuant to Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure.

~~SEC. 10.~~

*SEC. 11.* Section 94995 of the Education Code is amended to read:

94995. (a) Notwithstanding Section 7550.5 of the Government Code, on or before January 31 of each calendar year, the bureau shall submit a written report to the Legislature and to the California Postsecondary Education Commission, summarizing its activities during the previous fiscal year.

(b) Annual reports prepared pursuant to this section shall include, but shall not necessarily be limited to, all of the following:

(1) Timely information relating to the enforcement activities of the bureau pursuant to this chapter.

(2) Statistics providing a composite picture of the private postsecondary educational community, including data on how many schools, as classified by subject matter, and how many students there are within the scope of the activities of the bureau.

(c) Any reports submitted by the bureau to the Joint Legislative Sunset Review Committee pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code during any calendar year shall satisfy the reporting requirements of this section for that year.

*SEC. 12. The Legislature finds and declares that the amendments to Section 94945 of the Education Code made by Section 2 of this act do not constitute a change in, but are declaratory of, existing law.*